

# 22

## Zhang Meiqui et al. v. Jiangsu Province Intellectual Property Office et al.

*Citation: The Jiangsu Province Higher People's Court's Administrative Judgment No. Suxingzhongzi 0029/2006*

*Date of judgment: June 5, 2006*

### **Procedural history**

Wang Jun, the patentee, requested the Jiangsu Intellectual Property Office (JIPO) to handle a patent infringement dispute on the ground that the Taizhou City Yuanyi Plastic Plant (Yuanyi) infringed his design patent. The JIPO decided on the constitution of the infringement. Yuanyi brought an administrative action in the Jiangsu Nanjing Intermediate People's Court against the decision. In the first-instance judgment, the decision was upheld. Zhang Meigui, business operator of Yuanyi, and Yuanyi appealed to the Jiangsu Province Higher People's Court.

### **Issue**

1. Consequence of the flawed administrative procedure in which the Patent Administration Department handled the patent infringement dispute
2. Determination of private business as a party involved in administrative lawsuit

### **Facts**

Wang Jun, owner of a patent (ZL03316992.6) for a design of flower pot, alleged that Yuanyi had infringed his design patent right, so he filed a request with the JIPO to handle the matter of patent infringement dispute. Yuanyi was a privately owned business, and its business operator was Zhang Meigui. The JIPO accepted the request on March 21, 2005, and held an oral hearing on June 16, 2005, but the accused infringer did not attend the oral hearing. Later, the JIPO decided to handle

the case in writing. Upon comparison, the JIPO determined that the allegedly infringing product was a design similar to the patented design, and made its decision in August 2005 under the Patent Law and the Patent Administrative Enforcement Measures, requesting Zhang Meigui and Yuanyi to immediately cease their act of infringement of the design patent in suit, and destroy the infringing products in stock and the die they used to make the products. The first-instance court upheld the administrative decision.

Zhang Meigui and Yuanyi appealed, arguing that: 1) the JIPO did not notify them of the oral hearing, and then decided to handle the case in writing. For that reason, the administrative procedure was undue; and 2) the JIPO erred in taking Yuanyi as a party directed to whom the decision was made.

### **Rule of law**

Article 10 of the Patent Administrative Enforcement Measures *In handling a patent infringement dispute, the administrative authority for patent affairs may, if necessary according to the facts of a case, decide on whether to hold an oral hearing. Where it decides to do so, the administrative authority for patent affairs shall inform the interested parties of the time and venue thereof at least three days before the oral hearing. Where an interested party refuses to attend without justification, or leave before the oral hearing finishes without permission, the requester shall be treated as having withdrawn his request, or the respondent shall be treated as being absent from the oral hearing.*

Article 46 of the Supreme People's Court's Opinions on Several Issues Relating to Application of the Civil Procedure Law of the People's Republic of China *In lawsuit, the owner shown on the Business Certificate of Private Business shall be the party. If the business has its own trade name, said trade name shall be indicated on the legal documents; where the owner indicated on the Business Certificate is not the actual business operator, both shall be parties to the lawsuit.*"

### **Reasoning**

1. The JIPO stated that it had notified Zhang Meigui of the oral hearing by mail. Since the JIPO failed to produce any proof of mailing the notification or any other proof showing Zhang Meigui's

receipt thereof, its statement was not accepted for lack of factual support. Under Article 10 of the Patent Administrative Enforcement Measures, the administrative authority for patent affairs, when handling a case of patent infringement dispute, may, if necessary according to the facts of a case, decide on whether to hold an oral hearing. Therefore, it was up to the JIPO to decide on whether to hold the oral hearing. The JIPO proceeded with the oral hearing in the absence of Zhang Meigui. But considering that Zhang Meigui did not acknowledge his receipt of the notification and taking account of the factors, such as the uncomplicated nature of technical determination of the design patent in suit, the JIPO handled the dispute in writing. The administrative action, though flawed, did not infringe Zhang Meigui's lawful rights and interests.

2. As a registered private business, Yuanyi ran its business under its registered trade name. For that reason, the JIPO did not act in violation of the law in focusing on the trade name in its handling the dispute of patent infringement. Since the rights and obligations in running a private business were borne by its business operator, the JIPO made its administrative decision directed to the trade name of the private business, wherein the involved legal liabilities were virtually borne by its business operator. Therefore, the business operator involved in the administrative suit had his interests directly at stake in the specific administrative action in suit, so he should be a party thereto. Under the Supreme People's Court's Opinions on Several Issues Relating to Application of the Civil Procedure Law of the People's Republic of China, the first-instance court erred in taking Yuanyi as the plaintiff, and the error should be rectified.

### ***Holding***

1. While its administrative procedure was flawed, the JIPO did not infringe Zhang Meigui's lawful rights and interests, so the flaw was not sufficient to render the administrative decision reversible.
2. The first-instance court erred in taking Yuanyi as the plaintiff, and the error should be rectified, but this error alone was not sufficient to render the first-instance judgment reversible.